



2001 SENATE BILL 414

February 4, 2002 - Introduced by Senators BAUMGART, SCHULTZ and WIRCH, cosponsored by Representatives GRONEMUS, PETTIS, HAHN, RYBA, MILLER, ALBERS, LASSA and SERATTI. Referred to Committee on Economic Development and Corrections.

1 **AN ACT to create** 20.115 (1) (jg) and 100.298 of the statutes; **relating to:** the
2 regulation of business opportunity plans, granting rule-making authority,
3 making an appropriation, and providing a penalty.

Analysis by the Legislative Reference Bureau

This bill imposes requirements and restrictions on businesses that sell or lease business opportunity plans. Under the bill, a business opportunity plan is defined as an agreement under which a person sells or leases products to another after having made certain types of representations. These representations include statements that the purchaser may earn an amount that is in excess of the purchaser's investment by reselling and releasing the products that are the subject of the plan and that there is a market for these products. Under the bill, a business engaged in selling or leasing these plans must provide the purchasers a written disclosure, which includes a statement that there is no guarantee of the amount to be earned under the plan. To be subject to these provisions, a business engaged in selling or leasing these plans must have sold or leased at least five plans within the 24 months immediately before making an offer to sell or lease the plan or must represent that it intends to sell or lease at least five plans within the 12 months following the date of the sale or lease of the plan being offered.

Under the bill, a business selling or leasing these plans must register the business opportunity plan with the department of agriculture, trade and consumer protection (DATCP) and pay a registration fee of \$300 for the plan. The registrant must also file a bond with DATCP. The bill imposes a minimum of \$75,000 on the

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amount of the bond and requirements on the type of bond and the qualification of the surety company endorsing the bond, but allows DATCP to promulgate rules to eliminate or change these requirements concerning the type of bond, the surety company, and the minimum amount.

The bill exempts various sales or leases and other transactions from these requirements. These exemptions include sales or leases of securities and franchises and certain real estate transactions. Also, a license granted by a business selling or leasing these plans that allows the sale or lease of products under the business's trademark or trade name are exempt if the business has been continually doing business in this state for five years, if the business as well as the license grantee sells or leases the products directly to the public, and if during the previous 12 months the amount of gross receipts from the sale and lease of these products to the general public through a business opportunity plan has equaled at least 50% of the total fair market value of the products that were sold or leased to all of the purchasers participating in the plan. Also exempted is a sale or lease to a purchaser who has been purchasing other products from the business offering the plan for at least six months and who has recouped in the reselling or releasing of these products a gross amount that is equal to the purchaser's investment.

The bill authorizes DATCP to bring suit to enforce these provisions. The bill also imposes forfeitures for the violation of these provisions and also authorizes a court to impose a fine or imprisonment or both if the violation involves an intent to defraud.

For further information see the *state and local* fiscal estimate, which will be printed as an appendix to this bill.

The people of the state of Wisconsin, represented in senate and assembly, do enact as follows:

1 **SECTION 1.** 20.115 (1) (jg) of the statutes is created to read:

2 20.115 (1) (jg) *Business opportunity plan regulation.* All moneys received from
3 the fees collected under s. 100.298 (2) (c) for the regulation of business opportunity
4 enterprises under s. 100.298.

5 **SECTION 2.** 100.298 of the statutes is created to read:

6 **100.298 Regulation of business opportunity plans. (1) DEFINITIONS.** In
7 this section:

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1 (a) “Business opportunity enterprise” means a person or persons engaged in the
2 business of offering business opportunity plans to, or entering into business
3 opportunity plans with, purchasers.

4 (b) “Business opportunity plan” means an agreement under which a business
5 opportunity enterprise sells or leases products to a purchaser after the business
6 opportunity enterprise has made any of the following representations:

7 1. That the business opportunity enterprise may purchase any item made,
8 grown, bred, modified, or developed by the purchaser using any of the products sold
9 or leased under the business opportunity plan.

10 2. That the purchaser may earn an amount by selling or leasing the products
11 subject to the business opportunity plan that is in excess of the purchaser’s
12 investment.

13 3. That there is a market for the product or anything made, grown, bred,
14 modified, or developed by the purchaser using any of the products that are subject
15 to the business opportunity plan.

16 (c) “Business opportunity plan group” means all of the purchasers who have
17 entered into business opportunity plans with the same business opportunity
18 enterprise to purchase the same product under the same terms and conditions.

19 (d) “Products” means goods, services, or training or any combination thereof.

20 (e) “Purchaser” means a person who is solicited to enter into or who enters into
21 a business opportunity plan with a business opportunity enterprise.

22 (f) “Purchaser’s investment” means any consideration given by or on behalf of
23 the purchaser to a business opportunity enterprise to buy or lease products that are
24 subject to a business opportunity plan.

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1 **(2) REGISTRATION REQUIREMENTS.** No business opportunity enterprise or its
2 employee or agent may offer or enter into, in this state, any business opportunity
3 plan unless all of the following apply:

4 (a) The business opportunity enterprise has registered the business
5 opportunity plan with the department at least 30 days before offering the business
6 opportunity plan. The registration shall include the following information:

7 1. The official name, address, and places of business of the business opportunity
8 enterprise. If the business opportunity enterprise is a partnership, limited liability
9 company, or association, the name and address of each member. If the business
10 opportunity enterprise is a corporation, the name and address of each of its officers.

11 2. A copy of the articles of incorporation, if applicable.

12 3. The name under which the business opportunity enterprise intends to do
13 business.

14 4. Any trademarks, trade names, service marks, advertising symbols, or other
15 commercial symbols that identify the products to be sold or leased under the business
16 opportunity plan.

17 5. The name of any business opportunity plan in which the business
18 opportunity enterprise has been involved within the 5 years immediately before the
19 date on which the business opportunity enterprise submits the registration to the
20 department.

21 6. A factual description of the business opportunity plan.

22 7. A statement specifying the amount that the purchaser must pay to the
23 business opportunity enterprise as the purchaser's investment in order to enter into
24 the business opportunity plan.

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1 8. A statement specifying any amounts, in addition to the purchaser's
2 investment, that the purchaser must pay to the business opportunity enterprise
3 under the business opportunity plan.

4 9. A record of any conviction, civil order or judgment, administrative order, or
5 other legal proceeding that relates to or affects the business practices of the business
6 opportunity enterprise.

7 10. Any other information required by the department by rule.

8 (b) The business opportunity enterprise files a bond or other security with the
9 department as required under sub. (2m).

10 (c) The business opportunity enterprise pays a registration fee of \$300 for the
11 business opportunity plan being registered, unless the department by rule
12 establishes a different amount.

13 **(2m) BOND OR SURETY REQUIREMENTS.** (a) Except as provided in par. (b), the
14 department shall require, for purposes of sub. (2) (b), a continuous surety bond
15 payable to the department, on a form approved by the department and endorsed by
16 a surety company licensed to do business in this state.

17 (b) The department may promulgate rules changing or eliminating any of the
18 requirements under par. (a) relating to the type of security, the type of form used, or
19 the qualifications of surety companies.

20 (c) The department shall set the bond or other security to be filed under sub.
21 (2) (b) in an amount that is equal to at least \$75,000, unless the department by rule
22 sets a different minimum amount.

23 **(3) DISCLOSURE REQUIREMENTS.** (a) If a business opportunity enterprise or its
24 employee or agent makes any statement concerning the amount or range of earnings
25 or receipts that may be made by a purchaser under a business opportunity plan, the

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1 business opportunity enterprise or its employee or agent shall provide a written
2 disclosure that reads as follows:

3 **DISCLOSURE**

4 No guarantee of earning or range of earnings through this business opportunity
5 plan can be made. The number of purchasers who have earned, through this
6 business opportunity plan, an amount in excess of the amount of their purchasers'
7 investments is at least, which represents% of the total number of purchasers
8 of the business opportunity plan.

9 (b) Before providing a written disclosure under par. (a), the business
10 opportunity enterprise or its employee or agent shall enter the appropriate
11 calculations on the blanks on the disclosure.

12 **(3m) APPLICABILITY.** This section applies only to business opportunity plans
13 that are offered or entered into by business opportunity enterprises or by their
14 employees or agents to which any of the following applies:

15 (a) The business opportunity enterprise has entered into 5 or more business
16 opportunity plans within the 24 months immediately before the date of the offer of
17 the business opportunity plan.

18 (b) The business opportunity enterprise or its employee or agent represents
19 that the business opportunity enterprise has entered into 5 or more business
20 opportunity plans within the 24 months immediately before the date of the offer of
21 the business opportunity plan.

22 (c) The business opportunity enterprise or its employee or agent represents
23 that the business opportunity enterprise intends to offer 5 or more business
24 opportunity plans during the 12 months immediately following the date of the offer
25 of the business opportunity plan.

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1 **(4) EXEMPTIONS.** This section does not apply to any of the following:

2 (a) Any sale or lease of any security, as defined in s. 551.02 (13).

3 (b) Any sale or lease of any franchise, as defined in s. 553.03 (4).

4 (c) Any transaction, as defined in s. 452.01 (10), in which the business
5 opportunity enterprise or its employee or agent or the purchaser is licensed or
6 registered under ch. 452.

7 (d) Any school or program approved by the educational approval board.

8 (e) A license granted by a business opportunity enterprise that allows the
9 purchaser to sell or lease products to the general public under the trademark, trade
10 name, or service mark of the business opportunity enterprise if all of the following
11 apply:

12 1. The business opportunity enterprise has been doing business in this state
13 continually for 5 years immediately before the date on which the license is to be
14 granted.

15 2. The business opportunity enterprise sells or leases directly to the general
16 public the same products that are purchased or leased by the purchaser.

17 3. During the 12 months immediately before the date on which the license is
18 to be granted, the amount of gross receipts from sales and leases of the products made
19 directly to the general public by all of the purchasers who are part of a business
20 opportunity plan group equaled at least 50% of the total fair market value of the
21 products that were sold or leased to those purchasers.

22 (f) A newspaper distribution system, as defined by the department by rule.

23 (g) A sale in its entirety of a business that sells or leases products that are
24 subject to a business opportunity plan, but that, for at least 6 months immediately
25 before the date on which the business opportunity plan became effective, had been

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1 operated from a particular location, had been open for business to the general public,
2 and had sold or leased all of the products from that location.

3 (h) A sale or lease, or an offer to sell or lease, to a purchaser who has done all
4 of the following:

5 1. Bought or acquired by lease products, for a period of at least 6 months before
6 the date on which the business opportunity plan becomes effective, that were either
7 produced by the business opportunity enterprise or that had the same trademark,
8 trade name, or service mark as the products under the business opportunity plan.

9 2. Received in reselling or releasing the products specified in subd. 1. a gross
10 amount that is at least equal to the purchaser's investment for the business
11 opportunity plan.

12 **(5) REMEDIES AND PENALTIES.** (a) Any person suffering pecuniary loss because
13 of a violation of this section or any rule promulgated under this section may sue for
14 damages and shall recover twice the amount of such pecuniary loss, together with
15 costs, including reasonable attorney fees.

16 (b) 1. The department may commence an action in the name of the state to
17 restrain the violation of this section or any rule promulgated under this section. The
18 court may, before the entry of final judgment, make such orders or judgments as may
19 be necessary to restore any pecuniary loss suffered by any person because of the
20 violation of this section or any rule promulgated under this section.

21 2. The department may use its authority under ss. 93.14 to 93.16 to investigate
22 violations of any order issued under this paragraph.

23 3. The court may order a person who commits a violation of this section or the
24 rules promulgated under this section to pay the reasonable and necessary costs of
25 investigation and of prosecution, including attorney fees, related to the violation.

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1 (c) Any person who violates this section or any rule promulgated under this
2 section shall forfeit not less than \$100 nor more than \$10,000 for each violation. The
3 department or any district attorney may commence an action in the name of the state
4 to recover a forfeiture under this paragraph.

5 (d) Any person who violates this section or any rule promulgated under this
6 section with intent to defraud another may be fined, for each violation, not more than
7 \$5,000 or imprisoned for not more than 5 years or both.

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(END)